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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GRIGOR NALBANDYAN et al., Plaintiffs and Appellants, v. GLENDALE UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	B234557 (Los Angeles County Super. Ct. No. BC417899)

APPEAL from a judgment of the Superior Court of Los Angeles County, David S. Milton, Judge. Affirmed.

Yarian & Patatanyan and Levik Yarian for Plaintiffs and Appellants.

Doumanian & Associates and Nancy P. Doumanian for Defendant and Respondent.

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INTRODUCTION

Plaintiffs Grigor Nalbandyan and Lilit Markaryan are parents of Meri Nalbandyan, who was fatally injured when struck by an automobile while walking in a crosswalk on her way to school. Plaintiffs appeal from a judgment entered after the trial court granted summary judgment for defendant Glendale Unified School District (GUSD). We find that because GUSD did not specifically assume responsibility or liability for Meri Nalbandyan's conduct or safety when she was in the crosswalk and not on school property, Education Code section 44808[1] provides GUSD with immunity from liability for her injuries. Moreover, because GUSD did not own or control the crosswalk, it was not liable for a dangerous condition of public property. Summary judgment was properly granted, and we affirm the judgment for GUSD.

FACTUAL AND PROCEDURAL HISTORY

At 8:00 a.m. on October 29, 2008, plaintiffs' daughter, Meri Nalbandyan, was crossing in a crosswalk at 700 Glenwood Road in Glendale. The crosswalk is located in front of the school she attended, Toll Middle School, a school operated by defendant GUSD. Meri was walking to school before her first class started at 8:10 a.m. While crossing, Meri was fatally struck by a car driven by Yuri Park.

GUSD did not own or build the crosswalk, or design its specific location. The City of Glendale owned the crosswalk. GUSD did not provide crossing guards, and no crossing guards were present, in the crosswalk where the automobile struck Meri. Meri was taken to and from Toll Middle School by a parent or guardian, not by a school bus or school employee.

Meri's parents, Lilit Markaryan and Grigor Nalbandyan, filed a complaint against GUSD and other defendants. The operative complaint alleged causes of action for wrongful death based on negligence and premises liability and for negligent infliction of emotional distress. The operative complaint does not allege a dangerous condition on the Toll Middle School campus.

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[1] All undesignated statutory references are to the Education Code.

GUSD moved for summary judgment on the grounds that Education Code section 44808 barred the complaint, and that because of the absence of a dangerous condition of public property or of GUSD's negligence, there were no triable issues of fact as to plaintiffs' causes of action. Plaintiffs' opposition argued that GUSD was directly and substantially involved in the traffic and safety issues that were the subject of the suit, and GUSD presented no evidence that the crosswalk where the accident occurred was not a dangerous property and did not cause or contribute to the accident.

The trial court granted summary judgment for GUSD. It found that GUSD had established a complete defense under section 44808, in that the accident did not take place on school property, GUSD did not own, control, or maintain the crosswalk, the victim was not on school property when the accident occurred, and no exceptions to statutory immunity applied. Although plaintiffs argued that GUSD had control of the crosswalk, could change drop-off or pick-up schedules, could determine where parking, loading, and unloading would occur, and had intense interaction with the City of Glendale concerning traffic and drop-off and safety issues, this was insufficient as a matter of law to establish that GUSD was negligent regarding any responsibility it assumed with respect to the pupil. Even if immunity were found not to apply, plaintiffs failed to establish a physical condition of GUSD's property that created a dangerous condition which would provide a basis for GUSD's statutory liability.

Judgment for GUSD was entered on September 23, 2011. Although plaintiffs filed a notice of appeal on July 15, 2011, before judgment was entered, we deem that prematurely filed notice of appeal to have been timely filed from the September 23, 2011, judgment. (*In re of Edde* (2009) 173 Cal.App.4th 883, 889; Cal. Rules of Court, rule 8.104(e).)

ISSUES

Plaintiffs claim on appeal that:

1. The trial court erroneously granted summary judgment for GUSD under Education Code section 44808 because GUSD undertook responsibility to provide for student safety outside of school premises; and

2. GUSD failed to establish that, as a matter of law, the crosswalk was not a dangerous condition of public property.

DISCUSSION

1. *Standard of Review*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .' [Citations.]" (*Merrill v. Navegar, Inc*. (2001) 26 Cal.4th 465, 476-477.)

2. *Section 44808 Applies, GUSD Has Immunity, and the Trial Court Properly Granted Summary Judgment*

Plaintiffs claim that the trial court erroneously granted summary judgment for GUSD because plaintiffs presented evidence creating triable issues of material fact as to whether GUSD assumed responsibility for student safety at the crosswalk within the meaning of section 44808. We disagree.

Section 44808 states: "Notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed

such responsibility or liability or has failed to exercise reasonable care under the circumstances.

"In the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district or board."

The purpose of section 44808 is to limit a school district's liability for injuries to pupils before or after school hours while they are going to or coming home from school. (*Hoyem v. Manhattan Beach City Sch. Dist*. (1978) 22 Cal.3d 508, 517.) Under section 44808, the school district would not be liable for injuries occurring off campus and outside school hours unless they resulted from the school district's negligence occurring on school grounds, or resulted from some specific undertaking by the school district which it performed in a negligent manner. (*Bassett v. Lakeside Inn, Inc*. (2006) 140 Cal.App.4th 863, 870 (*Bassett*).) Section 44808 grants a school district immunity for injuries to students not on school property, but withdraws this grant of immunity if the school district fails to exercise reasonable care when the student is or should be under the school's direct supervision. (*Bassett*, at p. 872.) Where a student is injured when she is not on school property and not while she was or should have been under the direct supervision of the school, section 44808 gives the District immunity from liability for that injury. (*Ibid*.)

"[S]chool districts are not responsible for the safety of students outside school property absent a specific undertaking by the school district and direct supervision by a district employee." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1357 (*Cerna*).) The issue is whether GUSD specifically assumed responsibility or liability for the conduct or safety of pupils when they were not on school property.

A. *GUSD Did Not Assume Specifically Assume Responsibility or Liability for Meri Nalbandyan's Conduct or Safety When Not on School Property*

Plaintiffs claim there was a triable issue of material fact whether GUSD assumed responsibility for providing for safety of students at the crosswalk. They cite testimony

by Stephen M. Zurn of the City of Glendale that in discussions with GUSD, principals of the various schools stated that they regularly discussed with parents the issues of student safety, traffic safety around schools, and the dropping off and picking up of students. Plaintiffs also cite Zurn's testimony about a project in the area of the Toll Middle School and two other nearby schools that came about as a result of the murder of a student by other youths in 2000. Zurn testified that this project resulted in "some pretty intense interaction with the School District, and from there we also implemented a number of what we thought were improvements in the area to help with traffic flow, drop-off, security type of things with the School District." Zurn testified that GUSD was actively involved in the 2000 project and paid close to half the $350,000 cost of the project. GUSD staff attended meetings with City of Glendale staff to provide input gathered from area schools, faculty, and principals, and GUSD staff and City staff worked together to identify potential upgrades. Zurn, however, could not recall any specific requests GUSD made regarding the 2000 project. He testified that GUSD was part of the decision-making process and had input into the proposal and implementation of the projects. Another City of Glendale employee, Thomas Mitchell, testified that although GUSD was a source of information and review, the City of Glendale implemented the improvements because all of them were in the public right of way.

None of these constitute a specific assumption of responsibility or liability. These actions occurred in 2000, eight years before the accident involving plaintiffs' daughter, and are thus not a "specific" assumption of responsibility or liability as to her or to the class of pedestrian Toll Middle School students of which she was a member. Although GUSD participated in the 2000 project, the City of Glendale implemented the project improvements, which were made on its property, not that of GUSD. Participation in discussions of safety does not lead to an inference that GUSD assumed responsibility for student pedestrians in the crosswalk. (See *Zamudio v. City and County of San Francisco* (1999) 70 Cal.App.4th 445, 453.) It is undisputed that the accident and injury did not occur on school property during school hours, and no GUSD employee was in charge of supervising use of the Glenwood Road crosswalk by Toll Middle School students.

"[D]istricts are not responsible for the safety of students outside school property absent a specific undertaking by the school district and direct supervision by a district employee." (*Cerna, supra*, 161 Cal.App.4th at p. 1357.)

Plaintiffs cite evidence that GUSD had its own program relating to parents dropping off and picking up children. Teachers or school personnel, however, did not supervise children at pick-up and drop-off zones at the Toll Middle School. Plaintiffs cite evidence that GUSD had an employee who dealt with safety of children and vehicular traffic, but that employee dealt with the City of Glendale when problems arose, and there was no evidence that he directly supervised students at the crosswalk at Toll Middle School. Plaintiffs cite evidence that parking regulations around Toll Middle School were enhanced, refined, and made more obvious during the 2000 project. Plaintiffs cite evidence that GUSD installed security cameras at Toll Middle School. However, there was no evidence concerning when those security cameras were installed or their location. None of this evidence constitutes a specific assumption of responsibility or liability for pupil conduct or safety by GUSD.

B. *GUSD Did Not Fail to Exercise Reasonable Care Under the Circumstances*

For there to be liability under section 44808, the school district must have specifically assumed responsibility or liability for the conduct or safety of pupils when they were not on school property, and must also have failed to exercise reasonable care under the circumstances. The latter element has been interpreted to mean the absence of direct supervision by a district employee during one of the undertakings mentioned in the statute. (*Cerna, supra*, 161 Cal.App.4th at pp. 1356-1357.) Here there was no undertaking by GUSD, i.e., GUSD did not specifically assume liability or responsibility for the conduct or safety of any pupil when such pupil was not on school property. Consequently GUSD could not have failed to exercise reasonable care under the circumstances.

Meri Nalbandyan was not injured while she was on school property and while she was or should have been under the school's direct supervision. GUSD did not specifically assume responsibility or liability for her conduct or safety when not on

school property. Section 44808 therefore applies and GUSD has immunity. The trial court properly granted summary judgment for GUSD.

C. *Case Law Supports the Grant of Immunity to GUSD*

Plaintiffs argue that the three cases relied on by GUSD in fact support plaintiffs' position. None of them do.

In *Hoyem v. Manhattan Beach City Sch. Dist., supra*, 22 Cal.3d 508, a 10-year-old student left school premises before the end of scheduled classes and four blocks from the school was injured by a third party motorcyclist. (*Id*. at pp. 512, 528.) *Hoyem* held that defendant school district had a duty to exercise reasonable care in supervising students during school hours and on school premises, and this duty to supervise included the duty to enforce a rule prohibiting a pupil from leaving school premises at any time before the regular hour for closing school. The school district failed to exercise ordinary care in supervising the plaintiff student while that student was on school grounds. (*Id*. at pp. 513-515, 518, 523.) Meri Nalbandyan had not yet arrived at school when she was injured, and unlike the student in *Hoyem*, had not left school grounds as a result of negligent supervision by GUSD. *Hoyem* thus provides no authority for a determination that Education Code section 44808 immunity does not apply in this appeal.

In *Bassett, supra*, 140 Cal.App.4th 863, on her way to her first day of high school, a student crossed the street at a crosswalk and was struck by a car driven by a drunk driver. The school district had designated a school bus pickup point at that intersection. The student died later that day. (*Id*. at p. 866.) Her parents sued the school district, alleging that the district was liable because it designated a dangerous location for the bus stop and the student was on her way to the bus stop and intended to take the bus to school. (*Id*. at pp. 867, 870.) *Bassett* rejected the plaintiffs' argument that the school district undertook to provide transportation to the school and failed to exercise reasonable care under the circumstances in designating the location of the bus stop. It held that because the student was not injured on school property and was not injured while she was or should have been under the direct supervision of the school, section 44808 applied and

the school district had immunity. (*Id*. at pp. 871-872.) *Bassett* supports a finding that section 44808 immunity applies in this appeal.

In *Cerna, supra,* 161 Cal.App.4th 1340, a motorist struck a mother and five children on their way to school as they walked in a marked crosswalk at an intersection. Surviving pedestrians and family members sued the school district for its alleged negligence in failing to assure safe school access. (*Id*. at pp. 1344-1345.) Plaintiffs alleged that the school district specifically assumed responsibility for their safety by preparing an EIR analyzing traffic safety impacts, adopting a resolution finding that a site selection standard for pedestrian safety was met, and by telling parents it would take steps to make it safe to walk to and from the school. *Cerna* rejected the argument that by these actions the school district specifically assumed responsibility for the plaintiffs' safety. The EIR did not analyze the intersection where plaintiffs were injured, and contained no suggestion that the district assumed any responsibility for pedestrian safety at that intersection. The site selection standards resolution referred to a traffic mitigation plan that complied with a School Area Pedestrian Safety manual, but that manual created no mandatory duties and provided only advisory guidelines for bringing about desirable safety conditions. Unidentified District representatives' representations concerning installation and enforcement of adequate safety measures were too general and vague to constitute a specific assumption of liability under section 44808. Thus *Cerna* found that the school district's actions did not constitute the district's specific assumption of responsibility for plaintiffs' safety. (*Cerna,* at pp. 1358-1360.) In this appeal, plaintiffs have alleged GUSD's extensive involvement in providing for student safety, but we find that the district's actions did not constitute a specific assumption of responsibility or liability by the school district.

3. *GUSD Was Not Liable for a Dangerous Condition of Public Property*

Plaintiffs argue that regarding a dangerous condition of public property, GUSD failed to present evidence in its separate statement, and thus failed to meet the burden imposed on the party moving for summary judgment. We disagree.

A. *Dangerous Condition of Public Property*

Except as provided by statute, a public entity[2] such as GUSD, is not liable for an injury arising out of an act or omission by itself or its employees. (Gov. Code, § 815, subd. (a).) Government Code section 835 provides the sole statutory basis for imposing liability on public entities as property owners. (*Cerna, supra,* 161 Cal.App.4th at p. 1347.) Under Government Code section 835, "a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: [¶] (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] (b) the public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

" 'Dangerous condition' means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code, § 830, subd. (a).) Whether a dangerous condition exists is ordinarily a question of fact, but the issue can be decided as a matter of law if reasonable minds can reach only one conclusion. (*Cerna, supra,* 161 Cal.App.4th at p. 1347.) "A condition is not a dangerous condition . . . if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the

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[2] " 'Public entity' includes the state, the Regents of the University of California, the Trustees of the California State University and the California State University, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State." (Gov. Code, § 811.2.) Thus GUSD is a public entity. (*Wright v. Compton Unified Sch. Dist.* (1975) 46 Cal.App.3d 177, 181.)

condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used." (Gov. Code, § 830.2.)

Generalized allegations of a dangerous condition are not sufficient. A claim alleging a dangerous condition must specify in what manner the condition constitutes a dangerous condition, and plaintiff's evidence must establish a physical deficiency in the property. "A dangerous condition exists when public property 'is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself,' or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users." (*Cerna, supra*, 161 Cal.App.4th at pp. 1347-1348.)

If some physical characteristic of the property exposes users to increased danger from third party negligence or criminality, a public entity may be liable for a dangerous condition of public property where the third party's negligent or illegal act caused plaintiff's injury. Third party conduct by itself, however, which is unrelated to the condition of the property, does not constitute a dangerous condition for which a public entity may be held liable. The defective condition of the property must have some causal relationship to the third party conduct that injures the plaintiff. Public liability under Government Code section 835 will be found only when a feature of the public property has increased or intensified the danger to users from third party conduct. (*Cerna, supra*, 161 Cal.App.4th at p. 1348.)

B. *GUSD Did Not Own or Control the Crosswalk Where the Injury Occurred*

GUSD's motion for summary judgment argued that because it did not own or control the crosswalk, there was no dangerous condition of public property for which it could be held liable under plaintiffs' causes of action for wrongful death or negligent infliction of emotional distress.

"Liability under Government Code section 835 applies only where the public entity owns or controls the property. (Gov. Code, § 830, subd. (c).)" (*Bassett, supra*, (2006) 140 Cal.App.4th at p. 869.) It was undisputed that GUSD did not own or

construct the crosswalk where the injury occurred, that GUSD did not design the specific location of the crosswalk, and that the City of Glendale owned the crosswalk.

Plaintiffs' opposition to the summary judgment motion, however, asserted that GUSD controlled traffic and safety issues at the crosswalk. Plaintiff cited evidence that GUSD could request or change drop-off or pick-up schedules; could determine where parking and loading should occur; could manage student drop-off and pick-up locations; had "intense interaction" with the City of Glendale on traffic flow and drop-off and security issues and was actively involved in projects regarding students' safety and security; and had an employee in charge of safety issues. This evidence, however, does not specifically relate to the crosswalk where Meri Nalbandyan was injured, and does not create a triable issue of fact whether GUSD controlled the crosswalk.

There was no evidence that GUSD inspected or maintained the crosswalk or that its approval was required for work done on the crosswalk; even if it had, such evidence would not show control of the crosswalk. (*Chatman v. Alameda County Flood Control etc. Dist.* (1986) 183 Cal.App.3d 424, 431.) There was no evidence that GUSD exercised control over the hours of operation of the crosswalk, who could or could not use it, or whether it would remain open or had to close. There was no evidence that GUSD had the power to remedy any dangerous condition on the crosswalk or to require the City of Glendale to take corrective action. Even if it had, evidence of such regulatory actions or power would not show control of the crosswalk within the meaning of Government Code section 830. (*Public Utilities Com. v. Superior Court* (2010) 181 Cal.App.4th 364, 375-376; *Aaitui v. Grande Properties* (1994) 29 Cal.App.4th 1369, 1377-1378.) Because GUSD did not own or control the crosswalk, it was not liable for a dangerous condition of public property.

C. *Plaintiffs Provided No Evidence of a Dangerous Condition of the Crosswalk That Increased or Intensified the Risk of Injury from Third Party Conduct and Had a Causal Relationship to Injury by the Third-Party Conduct*

Even if GUSD were found to have owned or controlled the crosswalk, plaintiffs provided no evidence that the dangerous condition of the crosswalk increased or

intensified the risk of injury from third party conduct. As we have stated, if some physical characteristic of the property exposes users to increased danger from third party negligence or criminality, a public entity may be liable for a dangerous condition of public property. It is, however, not sufficient to show only harmful third party conduct, such as the conduct of a motorist. Third party conduct which is unrelated to the condition of the property does not constitute a "dangerous condition" for which a public entity may be held liable. (*Cerna, supra*, 161 Cal.App.4th at p. 1348.) "There must be a defect in the physical condition of the property and that defect must have some causal relationship to the third party conduct that injures the plaintiff." (*Ibid*.) "[P]ublic liability lies under [Government Code] section 835 only when a feature of the public property has 'increased or intensified' the danger to users from third party conduct." (*Bonnano v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 155.)

Besides the fact that GUSD did not own or control the crosswalk, plaintiffs' opposition to summary judgment did not identify any defect in the physical condition of the crosswalk which constituted a dangerous condition that increased or intensified the risk of injury from third party conduct. Plaintiffs also did not identify a causal relationship between a dangerous condition of the crosswalk and the third party conduct that injured Meri Nalbandyan. Government Code section 815.2, subdivision (a) requires a plaintiff to prove proximate causation in order to recover against a public entity. Plaintiffs' opposition to the summary judgment motion relied on an expert witness declaration by a civil and transportation engineer, who stated that if an effective, proven pedestrian warning system had been in place at the crosswalk, the driver who struck and killed Meri Nalbandyan would not have continued through the crosswalk when children were using that crosswalk. In the absence of actual proof of causation, however, an expert's opinion that an effective pedestrian warning system would have prevented the accident is speculation and conjecture, and is insufficient. (*Thompson v. Sacramento City Unified School Dist*. (2003) 107 Cal.App.4th 1352, 1371.)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to defendant Glendale Unified School District.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.